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IN THE

Supreme Court of the United States

October Term, 1957

Nos. 440 and 441

MORTON SOBELL,

Petitioner,

v.

UNITED STATES OF AMERICA.

SUPPLEMENTARY MEMORANDUM

Subsequent to the filing of our reply memorandum, certain actions by the Government have been brought to our attention which underscore the necessity for granting petitioner the hearings requested in the pending petitions for writ of certiorari.

On October 15, 1957, during the pendency of this case, a nationally distributed magazine published an extensive article * which reported that Attorney General Herbert Brownell, Jr., in December, 1956, ordered Assistant Attorney General William F. Tompkins to prepare a full report of the factual background of this case, based in part upon "previously unreleased facts." An eight-month long investigation has resulted in the preparation of a report, which, as the article states, will be released to the public. This report was made available to this national magazine. The writer of the article "was aided in his research by Government Attorney A. Warren Littman" and Benjamin F. Pollack, a Justice Department attorney. The magazine was "given access to the extensive data that went into the

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* *Look*, October 29, 1957, pp. 86-105.

Government report of which this article is an exclusive preview."

The claimed purpose of this report is to prove to the public that petitioner is guilty and that attacks upon the judgment are unwarranted.

The article states that the Department of Justice has evidence in its files, including "previously unreleased facts," establishing *inter alia* that petitioner was apprehended in Mexico and "deported as an undesirable alien." The Court will note that this statement deals with one of the essential factual issues underlying both pending petitions. This is one of the issues which petitioner maintains must be resolved in the course of a judicial hearing.

The Government has consistently refused to deny the central allegations of the petitions. Rather it has obliquely attempted through its briefs and oral arguments to discredit them. In this way it has sought to resolve them favorably to itself and at the same time circumvent the requirements of a hearing. So far it has been successful in the use of this technique, for both the district court and the Court of Appeals (see Pet. in No. 440, pp. 25-26, 33-34) proceeded as if a hearing had already been held and the Government had demonstrated that petitioner's allegations were unsubstantiated.

If the factual allegations of a petition under Section 2255 are not conclusively refuted by the files and records of the case, a hearing must be granted. The Government obviously is not content to rely upon the files and records of this case, but chooses to refute petitioner's contentions on the basis of "previously unreleased facts." If the Government is in a position to deny our allegations, such denials should be made by sworn statements in a court of law where they will be subjected to judicial inquiry. Press releases and reports issued to national magazines do not provide an adequate substitute.

It is distressing that the Government, while attempting to avoid a proper determination of the issues in a court, has resorted to polemics in a national magazine concerning a case which is *sub judice*. Surely, in this, of all, cases, the demands of fair play should not have been thus ignored. It is grossly unfair to petitioner to deny him a hearing, routinely granted upon comparable allegations in other cases, and at the same time to attack him and to insist upon his guilt upon the basis of evidence which the Government refuses to subject to judicial scrutiny. The Government should be directed to present its facts in the appropriate manner and forum. The petitions for writs of certiorari should be granted and hearings ordered on petitioner's allegations.

Respectfully submitted,

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